



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. L. v Minister of Employment and Social Development and the Estate of R. C.*,
2020 SST 706

Tribunal File Number: AD-20-678

BETWEEN:

S. L.

Applicant

and

Minister of Employment and Social Development

Respondent

and

The Estate of R. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shirley Netten

Date of Decision: August 17, 2020

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is granted, leave to appeal is granted, and the appeal on the question of procedural fairness is allowed.

BACKGROUND

[2] R. C. (the deceased) died in August 2015. The following month, S. L. (the Applicant) applied for a Canada Pension Plan (CPP) survivor's pension. Service Canada investigated and determined that the deceased and the Applicant had been in a common-law relationship from 1991 to 2015. The Applicant was granted the survivor's pension. Service Canada then reviewed the deceased's Guaranteed Income Supplement (GIS), because he had claimed the rate for a single person for many years. In December 2016, and on reconsideration in December 2017, Service Canada informed the Estate of a GIS overpayment for the period July 2000 to August 2015.

[3] The Estate appealed to the Social Security Tribunal's General Division. The Applicant was not involved in these proceedings, and the General Division did not add her as a party to the appeal. In May 2019, the General Division decided that the deceased and the Applicant had not been in a common-law relationship. This reversed the GIS overpayment for the Estate. The Applicant then lost her entitlement to the survivor's pension, and her GIS entitlement was re-adjusted to single status. The Applicant appealed the reconsideration decisions about these benefits to the General Division in January 2020, and eventually received a copy of the May 2019 General Division decision about her common-law status. The Applicant wants to appeal that decision to the Appeal Division, on the basis that the General Division should have added her as a party to the appeal.

AGREEMENT

[4] The parties participated in a settlement conference. They agreed to the following:

- The Applicant has standing to appeal the General Division decision;
- The application can proceed despite being filed two days beyond the statutory deadline, in light of circumstances related to the Covid-19 pandemic;
- Permission to appeal is granted and the appeal is allowed, because the General Division failed to include the Applicant in the proceedings and thereby acted in a manner that was procedurally unfair;
- The matter will be returned to the General Division for reconsideration by a different member;
- This matter and the Applicant's current appeals at the General Division (GP-20-53 and GP-20-54) will be dealt with jointly, with the Applicant added as a party to this appeal and the Estate being added as a party to GP-20-53 and GP-20-54;
- The documents coded AD2 and AD4 in AD-20-678 (which contain documents about the issue to be decided at the General Division) will be re-coded and added to the new General Division file for this appeal;
- The Minister will be given an opportunity to review its Reconsideration Files in each of the three appeal files (GP-20-53, GP-20-54 and the new General Division file), to determine if any redactions are required in light of the added party in each;
- After that, the documents in the new General Division file (which will include the General Division documents presently in AD-20-678) will be shared with the Applicant, and the documents in GP-20-53 and GP-20-54 will be shared with the Estate, so that all parties have access to all documents.

[5] The parties did not discuss the underlying question of common-law status at the settlement conference. Their agreement, and this appeal, was limited to the question of a procedural error at the General Division.

REASONS FOR DECISION

[6] The parties' agreement is consistent with the law and the evidence on file.

[7] The General Division decided whether the Applicant and the deceased were in a common-law relationship, and this decision had an impact on benefits for both the Applicant and the deceased. In this way, the Applicant was a subject of the decision. Consequently, she has standing to appeal the General Division decision under section 55 of the *Department of Employment and Social Development Act* (DESDA).

[8] Although the General Division issued the decision in May 2019, the Applicant did not receive a copy until March 2, 2020. Her representative filed the request for leave to appeal two days after the 90-day deadline to appeal. The delay has been attributed to operational delays at the community legal clinic due to COVID-19. It is in the interests of justice to allow the brief extension of time, in light of the reasons for the delay and the arguable case (evident from the agreement on the appeal).

[9] The agreement regarding leave to appeal and allowing the appeal is consistent with the facts of this case: the Applicant had a direct interest in the Estate's appeal to the General Division, and was negatively affected by its result. It was procedurally unfair for her not to have the opportunity to participate in proceedings that had significant consequences for her. The matter ought to be returned to the General Division for reconsideration in such circumstances.¹

[10] The agreed-upon remedy and directions will allow the General Division to make a single finding about whether the Applicant and the deceased were in a common-law relationship (and, if so, for what period), which the Minister can apply to all benefits at stake. The Applicant and the Estate will be able to participate in these proceedings by submitting evidence, testifying at a hearing, calling witnesses, and making arguments.

¹ DESDA, ss 58(1)(a), 59

[11] While not discussed at the settlement conference, I encourage the Minister to consider providing a single, consolidated reconsideration file for the three joined appeals, in light of the extensive duplication of documents.

CONCLUSION

[12] The appeal is allowed on the terms set out above.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	S. L., Applicant Monique Woolnough, for the Applicant Suzette Bernard, for the Respondent D. C., Executor of the Estate P. C., for the Added Party
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